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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,087	01/30/2006	Chad Munro	8932.1091-999	7522
30636 7590 12/03/2007 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER WOODALL, NICHOLAS W	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			12/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/530,087

Applicant(s)

MUNRO ET AL.

Examiner

Nicholas Woodall

Art Unit

3733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments are not persuasive. Regarding the applicant's argument that the 102(b) rejections applied using the Chemello prior art reference as being improper is not persuasive. First, the examiner would like to point out that the limitations being argued by the applicant as not being disclosed by the prior art reference are functionally recited limitations. Therefore, the prior art reference only needs to disclose a structural element that is capable of performing the function recited. The examiner believes that the tab, i.e. lip, is capable of being dimensioned as disclosed in the claims of the current application. Secondly, the 103 obviousness rejection the applicant discusses is in reference to the rejection of claim 16 and is irrelevant to the rejection of claim 1. The applicant's argument that the prior art being capable performing the functional limitations needs a teaching or motivation is not persuasive. The examiner believes that the prior art is capable of performing the functional limitations of the claims and does not need any motivation or teachings disclosing the device performing the functional limitations. The applicant's argument that the combination Stedtfeld modified by Chemello does not disclose the claimed limitations is not persuasive. First, the examiner would like to note that Chemello is not being used to teach the bone plate. The examiner believes that Stedtfeld discloses a bone plate capable of performing the functional limitations of the claims. Chemello is being used to teach adding a transverse bore hole in the proximal half of an intramedullary nail in order to insert a transverse screw through the intramedullary pin. The applicant's remaining arguments are based on Chemello not disclosing a bone plate capable of performing the functional limitations of the claims and are therefore not persuasive. The examiner believes that the prior art of Chemello discloses a device comprising a bone plate, wherein the bone plate is capable of performing the functional limitations of the claims. The examiner believes that the functional language requires the prior art to comprise a bone plate including an angled tab (91) configured and dimensioned, i.e. capable of, having a center of gravity lying on a radius of a cross-sectional area of the intramedullary pin, the examiner is interpreting this as any cross-sectional area of the intramedullary pin, taken orthogonally along the longitudinal axis and enclosing an angle beta, angle between the center of gravity and a projection of the longitudinal axis of the transverse bore hole of the pin, relative to a plane defined by the transverse borehole axis and the longitudinal axis, where the angle beta is between 0 and 100 degrees or 0 and -100 degrees. Therefore, the examiner is interpreting the claim as the bone plate including an angled tab capable of having a center of gravity lying on a radius of any orthogonal cross-sectional area of the intramedullary pin, wherein an angle beta relative to a plane defined by the transverse borehole and the longitudinal axis of the transverse borehole, wherein the angle beta is either between 0 and 100 degrees or 0 and -100 degrees. Chemello discloses a device comprising a bone having an angled tab (91) that includes a center of gravity, wherein the tab is capable of having the center of gravity lying on a radius of any orthogonal cross-sectional area of the intramedullary pin wherein an angle beta between the center of gravity of the tab and the longitudinal axis of the transverse borehole is between either 0 and 100 degrees or 0 and -100 degrees.